

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5143 of 2007()

LP.75/2004 of J.M.F.C.-III,NEYATTINKARA
[CRIME NO.187/98 OF VELLARADA POLICE STATION]
.....

PETITIONER/10TH ACCUSED

JAPA SINGH, S/O.ANTHRAYO.S., AGED 31,
USHA BHAVAN, UDAYAN KAVU, KOTALI POST,
VELLARADA VILLAGE.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.5143 of 2007

Dated this the 22nd day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. Investigation is complete. Final report has already been filed. The petitioner was not available for arrest during the stage of investigation or thereafter. The case against the petitioner has now been split up and is now transferred to the list of long pending cases. Warrant of arrest issued by the learned Magistrate is chasing the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and co-operate with the court for the expeditious disposal of the case. He shall apply for regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions

under Section 438 and/or 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. The learned Magistrate must certainly consider the petitioner's application for regular bail in the light of the decision in Sukumari v. State of Kerala [2001(1)KLT 22]).

(R.BASANT, JUDGE)

jsr

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PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007